

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JCD HERITAGE HILLS, L.L.C., and)	
JCD DUTCH ESTATES, L.L.C., both in)	
partnership and doing business as)	
“HERITAGE HILLS MHP” a.k.a.)	
“HERITAGE HILLS MHP, LLC”, and,)	
CLARK DONG, as an individual,)	
)	
Plaintiffs,)	Civil Action No. 1:23-15
)	
v.)	Judge Cathy Bissoon
)	
FERRELLGAS, L.P., FERRELLGAS)	
PARTNERS, L.P., FERRELLGAS, INC.,)	
and, DOES 1-25,)	
Defendants.)	

ORDER DISMISSING CASE

Currently pending before the Court is Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure (Doc. 20).

“When subject matter jurisdiction is challenged under Rule 12(b)(1), the plaintiff must bear the burden of persuasion.” Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991). Here, Plaintiffs’ Complaint alleges that this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332. See Compl. (Doc. 1) ¶ 3. Plaintiffs JCD Heritage Hills, L.L.C. and JCD Dutch Estates, L.L.C. are citizens of Texas, with principal places of business in California. *See* Doc. 4 (Disclosure Statement). Plaintiff Clark Dong, an individual, is a citizen of California. *See id.* The Complaint avers that Defendants are Delaware entities with principal places of business in states other than Texas and California. Compl. ¶ 3.b. Because Defendants Ferrellgas, L.P. and Ferrellgas Partners, L.P. are limited partnerships, however, citizenship for diversity purposes is based on the citizenship of all of their partners, both general and limited.

See Carden v. Arkoma Assocs., 494 U.S. 185, 195 (1990); GBForefront, L.P. v. Forefront Mgmt. Grp., LLC, 888 F.3d 29, 37 (3d Cir. 2018). Defendants assert, and Plaintiffs do not meaningfully contest, that Ferrellgas Partners, L.P. is a limited partnership with partners in both California and Texas, and that Ferrellgas Partners, L.P. is a partner of Ferrellgas, L.P., meaning that Ferrellgas, L.P. also has partners in California and Texas. *See* Def. Br. (Doc. 21) at 7-9 & Ex. 1 (Affidavit of Jordan Burns); Pl. Proposed Order (Doc. 23-1) ¶ 3.

Accordingly, diversity of citizenship under 28 U.S.C. § 1332, cannot serve as the basis of this Court’s jurisdiction. Moreover, Plaintiffs’ Complaint does not invoke jurisdiction under 28 U.S.C. § 1331, and does not contain any allegations that would raise a federal question. As evidenced by their alternative proposed order, Plaintiffs appear to concede these jurisdictional deficiencies. *See* Doc. 23-1. Plaintiffs argue, however, and the Court agrees, that the dismissal should be without prejudice. *See* Pl. Br. (Doc. 23) at 7 (citing In re Orthopedic “Bone Screw” Prods. Liability Litig., 132 F.3d 152, 155 (3d Cir. 1997)). Consistent with the foregoing, the Court finds that it lacks subject matter jurisdiction over Plaintiffs’ claims.¹

For the above reasons, Defendants’ 12(b)(1) Motion to Dismiss (**Doc. 20**) is hereby **GRANTED** except to the extent it seeks a dismissal with prejudice. Plaintiffs’ Complaint will be dismissed in its entirety, without prejudice, for lack of subject-matter jurisdiction, and this case shall be marked “Closed.”

IT IS SO ORDERED.

September 25, 2023

s/Cathy Bissoon
Cathy Bissoon
United States District Judge

¹ To the extent the motion papers raise additional issues such as the applicable statute of limitations and appropriate theories of liability, the Court is without jurisdiction to consider such matters and expresses no opinion as to the merits of the parties’ arguments regarding the same.

cc (via ECF email notification):

All Counsel of Record